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8	BEFORE THE	
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	
11	In the Matter of the Accusation Against:	Case No. 2013-872
12	DENNIS VICTOR HENRY	ACCUSATION
13	Post Office Box 6 Manhattan, Kansas 66505	
14	300 Center Drive Superior, CO 80027-8625	
15	•	
16	Registered Nurse License No. 591457	
17	Respondent.	
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her	
21.	official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
22	Consumer Affairs.	
23	2. On or about November 20, 2001, the Board of Registered Nursing issued Registered	
24	Nurse License Number 591457 to Dennis Victor Henry (Respondent). The Registered Nurse	
25	License expired on December 31, 2004, and has not been renewed.	
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27	///	
28	.	
		1

Accusation

#### **JURISDICTION**

- 3. This Accusation is brought before the Board of Registered Nursing (Board),
  Department of Consumer Affairs, under the authority of the following laws. All section
  references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.
- 6. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

#### STATUTORY/REGULATORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."
  - 8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."
- 9. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
  - 10. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

#### **COST RECOVERY**

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

#### **DRUGS**

12. Zolpidem (brand name Ambien) is a sedative used for the treatment of insomnia. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11056, subdivision (d)(32) and a dangerous drug pursuant to Business and Professions Code section 4022.

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### FIRST CAUSE FOR DISCIPLINE

#### (Conviction of Crime)

- 13. Respondent has subjected his license to disciplinary action under Code sections 2761, subdivision (f) and 490, in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse.
- A. On or about December 13, 2012, in the United States District Court, for the District of Hawaii, Case No. 12-00907, entitled *United States of America v. Dennis Henry*, Respondent was convicted by the court on his plea of guilty of violating Title 18, United States Code, section 2242, subdivision (2) (sexual abuse: incapable victim).

The circumstances are that on or about March 25, 2012, Respondent encountered G.C., a clearly intoxicated employee of the United States Coast Guard, outside of Respondent's Military Bachelor's Quarters. Respondent was employed as a registered nurse at Kwajalein Hospital. Respondent invited G.C. into his room for a beer, and G.C. accepted the invitation. Respondent placed Ambien into an open bottle of beer, without G.C.'s knowledge, and handed him the beer. G.C. consumed the beer and felt a "lump" in the beer when he swallowed. G.C. awoke the next morning with pain in his rear end. A sexual assault kit and evaluation was conducted and it was determined that G.C. had Zolpidem in his blood and a blood alcohol content of .30%. G.C. stated that he is "not attracted to men" and has never had consensual anal sex. Respondent admitted to possessing Ambien and Valium in his room. Respondent also admitted to oral and anal sex with an incapable victim (G.C.).

### SECOND CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Unlawfully Administered Controlled Substance)

- 14. Respondent has subjected his license to disciplinary action under Code section 2761, subdivision (a) on the grounds of unprofessional conduct as defined by section 2762, subdivision (b), by virtue of the conduct described in paragraph 13, above.
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### **PRAYER** 1 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this 2 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision: 3 Revoking or suspending Registered Nurse License Number 591457, issued to Dennis 1. 4 Victor Henry; 5 Ordering Dennis Victor Henry to pay the Board of Registered Nursing the reasonable 2. 6 costs of the investigation and enforcement of this case, pursuant to Business and Professions 7 Code section 125.3; 8 3. Taking such other and further action as deemed necessary and proper. 9 10 UISE R. BAILEY, M.ED., R. 11 **Executive Officer** Board of Registered Nursing 12 Department of Consumer Affairs State of California 13 Complainant 14 SF2013901320 15 90292881.doc 16 17 18 19 20 21 22 23 24 25 26 27 28